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Nos. 02-125 and 02-425

Supreme Court, U.S.
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In the Supreme Court of the United States

MICHAEL B. KING, APPELLANT

v.

STATE OF GEORGIA, ET AL.

MICHAEL B. KING, APPELLANT

v.

STATE OF GEORGIA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION OF THE FEDERAL APPELLEE TO DISMISS OR AFFIRM

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7 pp

QUESTION PRESENTED

Whether the district court abused its discretion in denying appellant's belated motions to intervene in a Voting Rights Act case.

In the Supreme Court of the United States

No. 02-125

MICHAEL B. KING, APPELLANT

v.

STATE OF GEORGIA, ET AL.

No. 02-425

MICHAEL B. KING, APPELLANT

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OPINIONS BELOW

The opinion of the three-judge district court denying appellant's motion to intervene without prejudice (02-125 J.S. App. 1C-3C) is unreported. The district court's opinion denying appellant's renewed motion to intervene (02-125 J.S. App. 1B-3B) also is unreported. The court's opinion denying appellant's third motion to intervene (02-125 J.S. App. 1A-124A) is reported at 195 F. Supp.2d 25. The opinion of the district court denying appellant's fourth motion to intervene (02-425 J.S. App. 1C-3C) is unreported.

JURISDICTION

The three-judge district court entered an order denying appellant's renewed motion to intervene on January 30, 2002 (02-125 J.S. App. 1B-3B). Appellant filed a notice of appeal on February 7, 2002. The district court entered its judgment denying appellant's subsequent motion to intervene on April 5, 2002, and appellant filed a notice of appeal from that judgment on April 17, 2002. The district court entered its fourth order denying appellant's motion to intervene on July 2, 2002, and appellant filed a notice of appeal on July 5, 2002. This Court has jurisdiction over those rulings on the motions to intervene pursuant to 42 U.S.C. 1973c.

STATEMENT

1. This appeal arises out of appellee State of Georgia's declaratory judgment action seeking preclearance of its redistricting plans for the United States Congress, State Senate, and State House of Representatives under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. See generally *Georgia* v. *Ashcroft*, 195 F. Supp.2d 25 (D.D.C. 2002) (three-judge court), prob. juris. noted, No. 02-182 (July 31, 2002).

Appellant, Michael B. King, is an African-American attorney and registered voter who, at the time of this proceeding, resided in the former Georgia State Senate District 44. On December 19, 2001, appellant filed, *pro se*, a motion for leave to intervene before the three-judge district court in Georgia's declaratory judgment action. The district court initially denied the motion without prejudice on the ground that the United States had not yet identified its position with respect to the redistricting plans in question and, as a result, the court was unable to determine whether appellant's interests would be adequately represented by the existing

parties. 02-125 J.S. App. 1C-3C. The court, however, granted appellant permission to appear as amicus curiae. *Id.* at 2C. Appellant failed to do so.

2. The United States identified its legal position on December 31, 2001, indicating that it would oppose preclearance only of three state senate districts. Appellant failed to renew his motion to intervene until January 15, 2002, and even then failed to serve his motion on the parties. Because trial was scheduled to commence in two weeks, the district court expedited review of appellant's renewed motion to intervene. Appellant failed to respond to Georgia's opposition to his intervention. Appellant also failed to appear at the court's scheduled pretrial conference. 02-125 J.S. App. 20A-22A. Accordingly, on January 30, 2002, the district court denied without prejudice appellant's motion to intervene "due to his failure to appear at the January 25, 2002 pretrial conference, of which he had notice, his consistent failure to communicate with Chambers and with counsel for the parties in this matter, and the expedited nature of these proceedings." *Id.* at 2B.

On the last day of trial for Georgia's Voting Rights Act case, appellant filed a motion for reconsideration of his renewed motion to intervene, a motion to stay the proceedings before the district court, and a notice of appeal to this Court from the order denying intervention. 02-125 J.S. App. 25A. On April 5, 2002, the district court issued its judgment in *State of Georgia* v. *Ashcroft*, *supra*. 02-125 J.S. App. 1A-124A.* As part of that decision, the district court denied appellant's motion to reconsider the denial of intervention. The

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* Georgia's appeal of the district court's judgment is currently pending before this Court. See *State of Georgia* v. *Ashcroft*, No. 02-182.

court noted that appellant "failed to protect [his] interest in a timely fashion by repeatedly failing to communicate with the court, to keep apprized of the case and to comply with local filing requirements," even though appellant "knew or should have known that the proceedings were subject to expedited review." *Id.* at 24A (internal quotation marks omitted). Appellant's "failure to act in a timely matter had the potential for seriously disrupting the State's electoral process." *Id.* at 24A-25A (internal quotation marks omitted). In any event, the court ruled that appellant's notice of appeal divested it of jurisdiction to rule on his motion for reconsideration or to stay the proceedings. *Id.* at 25A-26A.

3. On June 3, 2002, the district court granted preclearance to Georgia's revised state senate redistricting plan. 02-425 J.S. App. 1A-43A. On June 17, 2002, appellant filed a jurisdictional statement (No. 02-125) with this Court. One week later, appellant filed a fourth motion to intervene with the district court. The district court again noted that the motion was untimely, but denied it on the ground that the notice of appeal deprived the court of jurisdiction. 02-425 J.S. App. 1C-3C. Appellant filed a notice of appeal from that judgment and from the June 3, 2002, judgment granting preclearance to Georgia's revised redistricting plan. *Id.* at 1B-2B. Appellant filed a second amended jurisdictional statement (No. 02-425) with this Court on September 3, 2002.

DISCUSSION

Neither of appellant's jurisdictional statements contains any argument or discussion addressing the substantiality of the questions presented or providing any reason why this Court should grant plenary review

or reverse the judgments below. That failure to comply with this Court's rules, see S. Ct. R. 18.3, alone warrants dismissal of the appeals. In the alternative, appellant's failure to abide by this Court's rules, which is simply the continuation of his pattern of failing to comply with filing and other procedural requirements before the district court, amply demonstrates why the district court's denials of his motions to intervene were not an abuse of discretion. Finally, because appellant is not a party to this litigation, he may not appeal the merits of the district court's preclearance rulings (see 02-125 J.S. ii; 02-425 J.S. ii). See, *e.g.*, *Marino* v. *Ortiz*, 484 U.S. 301, 303 (1988).

CONCLUSION

For the foregoing reasons, both appeals should be dismissed. In the alternative, the judgments of the district court should be summarily affirmed.

Respectfully submitted.

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